

STATE OF ARKANSAS
EXECUTIVE DEPARTMENT
PROCLAMATION

EO 05-09

TO ALL TO WHOM THESE PRESENTS COME — GREETINGS:

AN EXECUTIVE ORDER CONCERNING STATE OR STATE-FUNDED OR ASSISTED CONSTRUCTION PROJECTS:

WHEREAS, with regard to State or State-funded or assisted projects, Arkansans have the right to expect that their government will not only be good stewards of taxpayer money, but will promote the economical, non-discriminatory and efficient administration and completion of such projects; and

WHEREAS, in so doing, the State should accomplish the following: (1) promote open competition; (2) maintain a posture of neutrality toward the union or non-union status of contractors, and to see to it that no discrimination against either group of contractors or their employees based on such status occurs; (3) ensure that there is an opportunity to obtain the best contractor; (4) reduce the costs of quality construction; (5) expand job opportunities, especially for small and disadvantaged businesses; and (6) further advance free enterprise as a way of doing business in Arkansas, in the spirit of right-to-work and open competition; and

WHEREAS, the monumental efforts of the State to upgrade its school facilities in response to the Lake View School District decision by the Arkansas Supreme Court mandates that the above goals be at the forefront of each such project;

NOW, THEREFORE, I, Mike Huckabee, acting under the authority vested in me as Governor of the State of Arkansas, do hereby order the following:

Section 1. Definitions.

As employed in this Executive Order, unless the context clearly indicates otherwise, the following terms are defined as follows:

- (1) "Agency" shall mean each board, commission, department, office, or other authority of the government of the State of Arkansas, whether or not within, or subject to review by, another agency, except for the General Assembly and the Judiciary.
- (2) "Construction Contract" shall mean any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, or other improvements to real property in the State.
- (3) "Labor Organization" shall have the same meaning it has in 42 U.S.C. § 2000e(d).

Section 2. Promulgation of rules and regulations.

All affected Agencies shall promulgate and implement any necessary rules, regulations or policies to ensure compliance with the purpose and intent of this Executive Order.

Section 3. Scope of activities.

(a) To the extent permitted by law, any Agency awarding any Construction Contract after the date of this Executive Order, or obligating funds pursuant to a Construction Contract, shall ensure that neither the Agency nor any construction manager acting on behalf of the Agency shall, in its bid specifications, project agreements, or other controlling documents:

(1) Require bidders, offerors, contractors or subcontractors to enter into or adhere to, or prohibit bidders, offerors, contractors, or subcontractors from entering into or adhering to, agreements with one or more Labor Organizations, on the same or other related construction project(s); or

(2) Otherwise discriminate against bidders, offerors, contractors or subcontractors for becoming or refusing to become or remain signatories or otherwise adhering to agreements with one or more Labor Organizations on the same or other related construction project(s).

Nothing in this section shall prohibit contractors or subcontractors that are an employer in the construction industry from voluntarily entering into agreements described in subsection (a)(1) above.

(b) Contracts awarded before the date of this Executive Order, and subcontracts awarded pursuant to such contracts, whenever awarded, shall not be governed by this Executive Order.

(c) To the extent permitted by law, any Agency providing any public support, including, but not limited to, funding, grants, loans, loan guarantees, subsidies, tax exemptions, or tax credits for construction projects or affiliated real estate, or goods and services for construction, shall ensure that the bid specifications, project agreements, or other controlling documents for construction contracts awarded after the date of this Executive Order by recipients of public support, or by any construction manager acting on their behalf, do not contain any of the requirements or prohibitions described in subsection (a)(1) or (a)(2) above.

(d) If an awarding authority, a recipient of public support, or a construction manager acting on behalf of the foregoing, performs in a manner contrary to subsections (a) or (c) above, the Agency awarding the contract or assistance shall take such action, consistent with law and regulation, as the Agency determines to be appropriate.

(e)(1) The head of an Agency may exempt a particular project, contract, subcontract, or grant from the requirements of any or all of the provisions of subsections (a) and (c) above, if the Agency finds that special circumstances require an exemption in order to avert an imminent threat to public health or safety or to serve the national security. Such exemptions shall be subject to the Governor's approval.

(2) A finding of "special circumstances" under subsection (e)(1) above may not be based on the possibility or presence of a labor dispute concerning the use of contractors or subcontractors who are not signatories to, or otherwise do not adhere to, agreements with one or more Labor Organizations, or concerning employees on the project who are not members of or affiliated with a Labor Organization.

(f) All entities receiving public support (as defined in subsection (c) above) that enables construction shall be subject to immediate enforcement by the Agency to the extent permitted by law, up to and including loss of support, for failure to comply with this Executive Order within five (5) business days of notice by the Agency. Any project open for bid or awarded with a requirement or prohibition regarding agreements with one or more Labor Organizations shall be null and void and re-bid in order to assure compliance with this Executive Order.

(g) This Executive Order is intended only to improve the internal management of the executive branch and is not intended to, nor does it, create any right to administrative or judicial review, or any right, whether substantive or procedural, enforceable by any party against the State of Arkansas, its agencies or instrumentalities, its officers or employees, or any other person.

(h) The head of an Agency, upon application of an awarding authority, a recipient of public support, or a construction manager acting on behalf of any of the foregoing covered by this Executive Order may exempt a particular project from the requirements of any or all the provisions of subsections (a) and (c) above if the Agency finds: (i) that the awarding authority or recipient of public support or the construction manager acting on behalf of the foregoing had issued or was a party to, as of the date of this Executive Order, bid specifications, project agreements, agreements with one or more Labor Organizations, or other controlling documents with respect to that particular project, which contained any of the requirements or prohibitions contained in subsections (a)(1) or (a)(2) above; and (ii) that one or more

construction contracts subject to such requirements or prohibitions had been awarded as of the date of this Executive Order.

Section 4. Effective date.
This Executive Order shall be effective upon its signing, and shall remain in full force and effect until amended or rescinded by further executive order.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Arkansas to be affixed at the Capitol in Little Rock on the 21st day of July in the Year of our Lord, two thousand and five.



GOVERNOR MIKE HUCKABEE

SECRETARY OF STATE CHARLIE DANIELS